

**CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT
CHECKLIST FOR EVALUATION OF LOCAL PROGRAM ELEMENTS**

Note: Questions that appear in italics are designed to be helpful to the reviewed in the overall evaluation of a local program. A negative answer to these questions does not, in and of itself, indicate an inconsistent program but may indicate problem areas.

**PART 1. CRITERIA FOR DESIGNATION OF CHESAPEAKE BAY
PRESERVATION AREAS**

A. General Designation Criteria

What available mapping resources were used in the designation of CBPAs?

_____	_____
_____	_____
_____	_____

Are these maps available to CBLAD to use in the review of both RPAs and RMAs?

_____Yes _____No

What recommended resources were unavailable to the locality?

_____	_____
_____	_____

Has the process by which CBPAs were mapped been outlined in a textual statement?

_____Yes _____No Document: _____

How does the designation of CBPAs compare to the local comprehensive plan and recommendations for resource protection therein?

Has the locality included federal and state owned lands in their designation of Chesapeake Bay Preservation Areas?

_____Yes _____No

Has the locality designated lands within its jurisdiction that are outside the Bay drainage area?

_____Yes _____No Document: _____

B. Resource Protection Areas

Do the RPAs include all tidal shores, tidal wetlands, tributary streams, nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams?

____ Yes ____ No Discrepancies: _____

Does the locality designate “other lands” as an RPA feature? What justification is provided for inclusion of these other RPA components?

____ Yes ____ No Document: _____

Has the 100-foot buffer area around all other Resource Protection Area components been mapped?

____ Yes ____ No Discrepancies: _____

C. Resource Management Areas

Is the locality’s designation of the RMA based upon the extent of the environmental components outlined in § 3.3 of the Regulations? [Floodplains, highly erodible soils, highly permeable soils, and nontidal wetlands not included in the RPA]

____ Yes ____ No Discrepancies: _____

Does the locality designate “other lands” as an RMA feature? What justification is provided for inclusion of these?

____ Yes ____ No Document: _____

Has the locality made appropriate linkages between the RMA designation and resource constraints identified by the comprehensive plan? (e.g. areas of highly permeable soils that are to be served by septic systems are strong RMA candidates.)

____ Yes ____ No Document: _____

Does the RPA follow watershed boundaries?

____ Yes ____ No Partial _____

Does the locality utilize a set of linear distance in conjunction with the geographic extent of an RMA land type (e.g. floodplains or 500 feet, whichever is greater)?

____ Yes ____ No Document: _____

If the locality employed a set linear distance for designating the width of the RMA, is this width representative of the components outlined above?

____ Yes ____ No Document: _____

Does the locality's ordinance include a provision which requires where a portion of a lot or parcel is within a CBPA, the entire lot or parcel shall comply to the requirements of the ordinance? (Not applicable for jurisdiction-wide designation)

____ Yes ____ No Document: _____

If the locality uses an RPA "opt-out" approach, does it establish a minimum RMA contiguous to all RPAs? What is the minimum RMA width?

____ Yes ____ No _____

Based on the environmental inventory, what percent of the jurisdiction has RMA components defined in the Regulations? How does this percent compare to the percent of jurisdiction designated as CBPA?

Does the locality's designation include most of the vacant land within the jurisdiction (urban localities) or areas of anticipated growth and development?

____ Yes ____ No Document: _____

Does the RMA encompass an area large enough for best management practices and other performance criteria to work effectively?

____Yes ____No Documentation: _____

D. Intensely Developed Areas

How has the locality designated IDAs; are they shown as an overlay of RPAs and RMAs?

____Yes ____No Documentation: _____

Has the locality provided any justification for the designation of certain areas as IDAs?

____Yes ____No Documentation: _____

Has the overriding criteria in designating IDAs (“....areas of existing development and infill sites where little of the natural environment remains....”) been met?

____Yes ____No Discrepancies: _____

Has at least one of the following additional criteria been met in the locality’s IDA designation?

1. Development has severely altered the natural state of the area such that it has more than 50% impervious cover;
2. Public sewer and water is constructed and currently serves the area by October 1, 1989. This condition does not include area planned for public sewer and water;
3. Housing density is equal to or greater than 4 dwelling units per acre.

____Yes ____No Documentation: _____

PART II. LAND USE AND DEVELOPMENT PERFORMANCE CRITERIA

A. Purpose and Intent

Does the ordinance include a purpose and/or authority statement?

____Yes ____No Documentation: _____

Are appropriate citations from the Code included? [§§ 10.1-2108, 10.1-2109, 10.1-2111 of Chapter 21, Title 10.1 of the Code or Virginia; if zoning ordinance is local vehicle, also reference 15.1-489]

____ Yes ____ No Documentation: _____

Is proper reference made to the Regulations? [VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations.]

____ Yes ____ No Documentation: _____

B. Definitions

Are the definitions consistent with the Regulations? [§ 1.4]

____ Yes ____ No Documentation: _____

Do definitions reflect local context? (see Model Ordinance). Are deviations from definitions necessary to fit with existing local ordinance definitions and defensible from a water quality standpoint?

Discrepancies _____

C. Applicability

Has proper reference been made to the locality's CBPA map? Within the ordinance(s) text, is there a section which identifies the components of the Resource Protection Area as specified in the Regulations? [§ 3.2.B]

____ Yes ____ No Documentation: _____

Are all components of the RPA (including "other lands") defined?

____ Yes ____ No Documentation: _____

Is the Resource Management Area identified accurately in relation to the local RMA designation? [§ 3.3.A and B]

____ Yes ____ No Documentation: _____

Have IDAs been designated? Are IDAs strictly limited to those areas designated and adopted by the local government as an overlay to CBPAs? (As opposed to allowing property owners to “petition” for IDA status in the future.)

____Yes ____No Documentation: _____

Does the ordinance identify these areas by reference to the proper citation for IDAs [§ 3.4] or, preferably, does the ordinance text describe the specific boundaries of designated IDAs?

Does the local ordinance allow for site-specific boundaries based on more reliable or specific information gathered from Environmental Site Assessments? [§4.1.B]

____Yes ____No Documentation: _____

Where localities have an “opt out” provision from the performance standards (based on the performance of an environmental site assessment or “RMA limits study”, etc. which demonstrates an absence of RMA component), does the ordinance require such assessment or study to be prepared by a soil scientist (for demonstration of highly erodible or permeable soils) and/or a wetlands scientist (nontidal wetlands, hydric soils)?

____Yes ____No Documentation: _____

D. Performance Standards

1. General Performance Criteria

What mechanism(s) will the locality employ to minimize land disturbance? More specifically:

Does the locality establish a threshold for land disturbance in CBPAs?

____Yes ____No Documentation: _____

Does the locality include requirements for minimum open space within CBPAs?

- ? *Note which zoning districts have such requirements;*
- ? *What are the minimum percentages?*
- ? *What zoning classifications are exempt from open space requirements and what percentages does this represent of total development in CBPAs?*

____Yes ____No Documentation: _____

What other mechanisms, not identified above, will the locality employ to minimize land disturbance?

Documentation: _____

Does the locality include requirements which limit ingress and egress where possible to one point during construction? [§ 4.3.A.1.d]

____ Yes ____ No Documentation: _____

Does the locality require an approved site plan prior to any clearing or grading of the site and limit clearing or grading to the area depicted on the approved site plan? (Note that this stipulation is for “clearing or grading” and not “clearing and grading.”)

____ Yes ____ No Documentation: _____

Does the locality require the limits of clearing and grading to be shown on site plans and physically posted at the site?

____ Yes ____ No Documentation: _____

What mechanism(s) will the locality employ to minimize impervious cover? More specifically:

Does the locality have a threshold for impervious cover?

____ Yes ____ No Documentation: _____

Has the locality amended parking area requirements to reduce the size of parking spaces and drives within CBPAs or reduce the number of parking spaces? Do they include provisions for pervious material in constructing parking areas and driveways?

____ Yes ____ No Documentation: _____

What other mechanisms, not identified above, will the locality employ to minimize impervious cover?

Documentation: _____

What mechanism(s) will the locality employ in order to preserve indigenous vegetation?

Does the locality require an approved site plan (or landscape plan) which depicts all trees on site over a certain size and those to be removed prior to any clearing or grading?

____ Yes ____ No Documentation: _____

Does the locality's ordinance include language for tree preservation and tree protection? [§ 4.2.2]

____Yes ____No Documentation: _____

What other mechanisms, not identified above, will the locality employ to preserve indigenous vegetation?

Documentation: _____

2. Erosion and Sediment Control

Does the ordinance(s) implement the requirement that all land disturbance over 2500 square feet have an approved erosion and sediment control plan? [§ 4.2.6]

____Yes ____No Documentation: _____

Does the ordinance(s) disallow the exemptions granted by § 10.1-560 of the Code of Virginia for septic drainfields and single family housing [§ 4.2.6]

____Yes ____No Documentation: _____

Has the local Erosion and Sediment Control Ordinance been amended and cross-referenced with the overlay district or other ordinance implementing the performance criteria? (This can be accomplished in the Second Year Program but notation of it should be made now in the first year review.) [§§ 2.2.F, 4.2.6]

____Yes ____No Documentation: _____

Has the locality indicated how it will enforce this requirement, particularly, the inclusion of all single-family dwellings? Recommendations:

- ? *Use a simple application ("Agreement in lieu of a formal E & S Control Plan") and approval process.*
- ? *Institute a training program for building inspectors, who typically do on-site inspections;*
- ? *Provide for spot checks for single-family dwellings accompanied by a quick enforcement response in instances of noncompliance.*

____Yes ____No Documentation: _____

3. Agricultural Requirements

Has the locality incorporated all requirements for agricultural lands in the ordinance(s), including the requirements for a soil and water conservation plan (plan based upon the Field Office Technical Guide of the U.S. Department of Agricultural Soil Conservation Service and approved by the local Soil and Water Conservation District by January 1, 1995) and buffer areas?

____ Yes ____ No Documentation: _____

Has the locality secured an agreement with the local Soil and Water Conservation District?

____ Yes ____ No Documentation: _____

What kind of notification is being provided to area farmers?

4. Septic System Requirements

Are both requirements in the Regulations (pump-out and reserve drainfield) included in the ordinance(s)? [§ 4.2.7]

____ Yes ____ No Documentation: _____

Have the local Health Code regulations been amended and/or cross-referenced?

____ Yes ____ No Documentation: _____

Has the locality secured an agreement with their local sanitarian for enforcement of the new regulations?

____ Yes ____ No Documentation: _____

Has the locality made provisions to ensure that all existing septic systems within CBPAs meet the requirement of periodic pump-out?

____ Yes ____ No Documentation: _____

What system of tracking for pump-out requirements will the locality employ? What kind of notification to property owners will it provide? Is compliance with the pump-out requirement to be phased? Do these provisions attempt to target areas with the oldest systems or with evidence of failures?

5. Plan of Development

Does the ordinance require a plan of development process for any development over 2500 square feet within CBPAs? [§ 4.2.4]

☐ Yes ☐ No Documentation:

Does the ordinance establish any exemptions from the plan of development review requirements?

☐ Yes ☐ No Documentation:

Does the ordinance include provisions so that any exemptions from the plan of development requirements are administered in a manner that ensures compliance with the Act and Regulations? [§ 5.6.C]

☐ Yes ☐ No Documentation:

Does the ordinance(s) include requirements for a site plan, if the locality does not have these provisions elsewhere?

☐ Yes ☐ No Documentation:

Does the plan of development include an environmental site assessment which will be used to determine site-specific boundaries of the RPA?

☐ Yes ☐ No Documentation:

Does the plan of development include requirements for a stormwater management plan?

☐ Yes ☐ No Documentation:

Do the requirements for stormwater management plans provide adequate specificity for the preparation of such plans?

____Yes ____No Documentation: _____

Does the plan of development include requirements for an erosion and sediment control plan or is reference made to existing E & S plan requirements?

____Yes ____No Documentation: _____

Is the process of obtaining a wetlands permit expressly coordinated with the process for site plan or subdivision plan review and approval?

____Yes ____No Documentation: _____

Does the ordinance(s) ensure that an applicant would not be able to get a grading or building permit approved until all necessary wetlands permits have been obtained? [§ 4.2.11]

____Yes ____No Documentation: _____

(Note: this may be easier to administer for RPA wetlands; what is the locality's process for upland areas and nontidal wetlands?) Specifically:

- ? *Does the locality require an environmental site assessment for all development within CBPAs? As an alternative, does the locality require such an assessment for developments over a threshold size?*
- ? *Will the locality make use of the environmental inventory mapping in the review process?*

Are changes to the local wetlands board review process necessary and have these been accomplished?

____Yes ____No Documentation: _____

6. Stormwater Management [§ 4.2.8]

Does the locality require a no net increase in pollutant loads for new development?

____Yes ____No Documentation: _____

Has the locality indicated in the ordinance(s) the existing nutrient base load based on average land cover conditions? (.45lbs P/ac/yr vs. distinct average loads for each subwatershed within locality)

____Yes ____No Documentation: _____

Does the ordinance include a provision which specifies the calculation procedure for redevelopment shall be the same for both pre- and post-development?

____Yes ____No Documentation: _____

Does the ordinance(s) specify that for redevelopment projects, original post-development nonpoint source pollution loadings may be submitted for existing development loadings if design data is available?

____Yes ____No Documentation: _____

Does the ordinance(s) require a 10 % reduction in pollutant loads for redevelopment sites?

____Yes ____No Documentation: _____

Is there the ability for administrative waivers of the 10% requirements, provided the following:

- ? *in no case will the post-development runoff exceed pre-development load;*
- ? *runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution;*
- ? *existing BMPs are proven to be in good working order and performing at design level*

____Yes ____No Documentation: _____

Does the ordinance(s) require regular or periodic maintenance of BMPs and maintenance agreements between owner or developer and local government? [§ 4.2.3]

____Yes ____No Documentation: _____

7. Buffer Area Requirements [§ 4.3.B]

Are buffer area requirements in the ordinance(s) consistent with the Regulations? Has the 100-foot buffer area performance criteria been identified in the ordinance(s)?

____Yes ____No Documentation: _____

Is there adequate language to protect the buffer from encroachment? (e.g. tree replacement requirements, guidelines for vegetation removal consistent with the Regulations, requirements for path construction to control erosion, requirements for shoreline stabilization projects with are consistent with the Regulations.) [§ 4.3.B.1]

____ Yes ____ No Documentation: _____

Does the ordinance(s) include the provisions for relief for lots recorded prior to October 1, 1989, consistent with the Regulations? (minimum modifications necessary, area equal to that encroached upon established if possible, in no case shall the reduce portion of the buffer area be less than 50 feet) [§ 4.3.B.2]

____ Yes ____ No Documentation: _____

Are IDA areas exempt automatically from the buffer area requirements or does the ordinance require case-by-case determination of such exemptions?

Explanation _____ Documentation: _____

Is there language which will establish buffer areas in redevelopment over time? [§ 4.3.B.3]

____ Yes ____ No Documentation: _____

Are agricultural lands which include RPA features required to have buffer areas?

____ Yes ____ No Documentation: _____

Are reductions to the agricultural buffer area allowed according to the regulations?
[§ 4.3.B.4] Specifically:

- ? to a minimum of 50 feet when adjacent land is implementing a federal, state, or locally funded agricultural BMP program, provided the program and the reduced buffer provide equivalent water quality protection, pollutant removal, and water resource conservation of the full buffer area.
- ? to a minimum of 25 feet when a soil and water quality conservation plan approved by the local Soil and Water Conservation District has been implemented, provided that the portion of the plan for CBPA's achieves water quality protection at least the equivalent of the full buffer in the opinion of the local SWCD Board.
- ? buffer area is not required for (perennial) agricultural drainage ditches if the adjacent land has in place BMPs in accordance with a conservation plan approved by the local SWCD. (Note: Buffer area are not required for intermittent drainage ditches)

____ Yes ____ No Documentation: _____

8. Performance Criteria for RPAs

Is the type of development allowed in RPAs strictly limited to that allowed in the Regulations? [§ 4.3.A]

____ Yes ____ No Documentation: _____

Are conditions for RPA development clearly established?

- ? New or expanded water-dependent facility may be allowed provided:
- it does not conflict with the comprehensive plan;
 - complies with the performance criteria outlined above;
 - any non water-dependent component is located outside the RPA;
 - access will be provided with minimum disturbance, where possible, a single point of access.

____ Yes ____ No Documentation: _____

Are there provisions in the ordinance(s) to ensure that any new lot will be large enough to accommodate all of the performance requirements, including the required buffer area?

____ Yes ____ No Documentation: _____

Does the ordinance clearly require a water quality impact assessment for any development within RPAs, including encroachments into the landward 50 feet of the buffer area?

____ Yes ____ No Documentation: _____

9. Water Quality Impact Assessment (WQIA) [§§ 4.3.A, 5.6.E]

Is the locality requiring WQIAs for other developments outside the RPA that may warrant such assessments because of the unique characteristics of the site or intensity of the proposed use or development?

____ Yes ____ No Documentation: _____

What are the required elements of the WQIA? Do the elements provide enough information for the assessment of the impacts on water quality?

Who is the reviewing agency in the locality? Is there a distinction in the levels of water quality impact assessment? What is the difference?

____Yes ____No Documentation: _____

E. Nonconforming Use and Development Waivers [§ 4.5.A]

Does the ordinance permit the continued use of existing structures? Does the locality permit the expansion of nonconforming structures?

____Yes ____No Documentation: _____

Is there an administrative review procedure established for expansion of nonconforming structures or lots? Does this procedure include the following:

? no net increase in nonpoint source pollution;

? any development over 2500 square feet shall comply with the local erosion and sediment control ordinance.

____Yes ____No Documentation: _____

Does the locality require the submission of a sketch or site plan with the name of the applicant, the legal description of the property, a sketch of the proposed improvements, the boundary of the RPA, the location of any existing private water supply or sewage system?

____Yes ____No Documentation: _____

Is there a time limit on the nonconforming development waiver?

____Yes ____No Documentation: _____

F. Exemptions

Does the ordinance(s) specify provisions addressing the exemption of the construction, installation, operation, and maintenance of electric gas, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with the Erosion and Sediment Control Law [§ 10.1-560 et seq. of the Code of Virginia] or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board as constituting compliance with the Regulations?

____Yes ____No Documentation: _____

Does the ordinance(s) allow the construction, installation, and maintenance of water, sewer, and local gas lines to be exempt from the criteria provided that:

- ? such facilities are located to the maximum extent possible outside the RPA;
- ? land disturbance is minimized;
- ? construction is in accordance with all federal and state permits and designed and constructed to promote water quality protection;
- ? any land disturbance which exceeds 2500 square feet shall conform to erosion and sediment control requirements [§ 4.5.B.2]

____Yes ____No Documentation: _____

Does the ordinance allow exemptions in the RPA for the following: water wells, passive recreation facilities such as boardwalks, trails and pathways; historic preservation and archeological activities, provided that such development is accomplished with the local administrative review, any land disturbance exceeding 2500 square feet shall comply with erosion and sediment control requirements. [§ 4.5.C]

____Yes ____No Documentation: _____

What other exemptions does the ordinance(s) specify?

Are other exemptions consistent with the spirit and intent of the Act and Regulations?

____Yes ____No Documentation: _____

G. Exceptions [§ 4.6]

Does the ordinance provide for exceptions to the criteria?

____Yes ____No Documentation: _____

Are such exceptions limited to the “minimum necessary to afford relief” and does the ordinance state that “reasonable and appropriate conditions upon any exception granted shall be imposed as necessary so that the purpose and intent of the Act is preserved”?

____Yes ____No Documentation: _____

Is there a defined exception process, with unnecessary hardship proven for each case? Is the reviewing agency named?

____Yes ____No Documentation: _____

For exceptions to the RPA, does the exception or variance process include the water quality impact assessment as a basis for conditions to be imposed?

____Yes ____No Documentation: _____

H. Enforcement

Has the locality indicated their approach to enforcing the ordinance(s)? Have they identified the department or personnel to review site plans, enforce erosion and sediment control, review stormwater calculations and determine which BMPs are acceptable, perform on-site assessments of BMPs, and Erosion and Sediment Control?
